

## Union Calendar No. 44

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1484

**[Report No. 112–83]**

To amend title 38, United States Code, to improve the appeals process of the Department of Veterans Affairs and to establish a commission to study judicial review of the determination of veterans' benefits.

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### IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 2011

Mr. FILNER introduced the following bill; which was referred to the  
Committee on Veterans' Affairs

MAY 20, 2011

Additional sponsor: Mr. MICHAUD

MAY 20, 2011

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on April 12, 2011]

# **A BILL**

To amend title 38, United States Code, to improve the appeals process of the Department of Veterans Affairs and to establish a commission to study judicial review of the determination of veterans' benefits.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       *This Act may be cited as the “Veterans Appeals Im-*  
5       *provement Act of 2011”.*

6       **SEC. 2. WAIVER OF REGIONAL OFFICE JURISDICTION OVER**  
7                   **INCORPORATION OF SUPPLEMENTAL EVI-**  
8                   **DENCE INTO PREVIOUSLY SUBMITTED**  
9                   **CLAIMS.**

10       (a) *WAIVER.*—Section 7104 of title 38, United States  
11       *Code, is amended by adding at the end the following new*  
12       *subsection:*

13           “(f) *If a claimant or the claimant’s representative sub-*  
14       *mits new evidence in support of a case for which a sub-*  
15       *stantive appeal has been filed, such evidence shall be sub-*  
16       *mitted to the Board directly and not to the agency of juris-*  
17       *diction, unless the claimant or the claimant’s representative*  
18       *requests that the evidence be reviewed by the agency of juris-*  
19       *diction before being submitted to the Board.”.*

20       (b) *EFFECTIVE DATE.*—Subsection (f) of section 7104  
21       *of title 38, United States Code, as added by subsection (a)*  
22       *of this section, shall apply with respect to evidence sub-*  
23       *mitted on or after the date that is 90 days after the date*  
24       *of the enactment of this Act.*

1 **SEC. 3. COMMISSION TO STUDY JUDICIAL REVIEW OF THE**  
 2 **DETERMINATION OF VETERANS' BENEFITS.**

3 (a) *ESTABLISHMENT.*—*There is established a commis-*  
 4 *sion to be known as the “Veterans Judicial Review Commis-*  
 5 *sion” (in this section referred to as the “Commission”).*

6 (b) *DUTIES.*—*The Commission shall—*

7 (1) *evaluate the administrative and judicial ap-*  
 8 *pellate review processes of veterans’ and survivors’*  
 9 *benefits determinations; and*

10 (2) *make specific recommendations and offer so-*  
 11 *lutions to improve the accuracy, fairness, trans-*  
 12 *parency, predictability, timeliness, and finality of*  
 13 *such appellate review processes, including a rec-*  
 14 *ommendation as to whether the Court of Appeals for*  
 15 *Veterans Claims should have the authority to hear*  
 16 *class action or associational standing cases.*

17 (c) *MEMBERSHIP.*—

18 (1) *IN GENERAL.*—*The Commission shall be com-*  
 19 *posed of 13 members appointed as follows:*

20 (A) *Two individuals appointed by the*  
 21 *Speaker of the House of Representatives.*

22 (B) *Two individuals appointed jointly by*  
 23 *the President of the Senate and the President pro*  
 24 *tempore.*

25 (C) *Two individuals appointed by the mi-*  
 26 *nority leader of the House of Representatives.*

1           (D) *Two individuals appointed by the mi-*  
2           *nority leader of the Senate.*

3           (E) *Four individuals appointed by the*  
4           *President.*

5           (F) *One individual appointed by the Presi-*  
6           *dent, by and with the advice and consent of the*  
7           *Senate, who shall serve as chairperson.*

8           (2) *QUALIFICATIONS.—Individuals appointed*  
9           *under paragraph (1) shall—*

10           (A) *be specially qualified to serve on the*  
11           *Commission by virtue of their expert education,*  
12           *training, or experience associated with veterans’*  
13           *benefits, judicial review, constitutional law, or*  
14           *other areas of expertise pertinent to the duties of*  
15           *the Commission; and*

16           (B) *include individuals who—*

17                   (i) *are current or retired members of*  
18                   *the judiciary;*

19                   (ii) *are members of the legal or aca-*  
20                   *demic community; or*

21                   (iii) *represent—*

22                           (I) *veterans service organizations;*

23                           (II) *legal service organizations; or*

24                           (III) *other affected entities.*

1           (3) *TERMS.*—*Each member shall be appointed*  
2           *for the life of the Commission.*

3           (4) *VACANCY.*—*A vacancy in the Commission*  
4           *shall be filled in the manner in which the original*  
5           *appointment was made.*

6           (d) *MEETINGS.*—

7           (1) *IN GENERAL.*—*The Commission shall meet at*  
8           *the call of the Chairperson or a majority of its mem-*  
9           *bers.*

10          (2) *QUORUM.*—*A majority of the Commission*  
11          *shall constitute a quorum but a lesser number may*  
12          *hold hearings.*

13          (e) *PAY.*—

14          (1) *RATES OF PAY.*—*Except as provided in*  
15          *paragraph (2), members shall serve without pay.*

16          (2) *TRAVEL EXPENSE.*—*Each member shall re-*  
17          *ceive travel expenses, including per diem in lieu of*  
18          *subsistence, in accordance with applicable provisions*  
19          *under subchapter I of chapter 57 of title 5, United*  
20          *States Code.*

21          (f) *STAFF.*—

22          (1) *DIRECTOR.*—*The Commission shall have a*  
23          *director who shall be appointed by the Chairperson.*

1           (2) *STAFF.*—Subject to rules prescribed by the  
 2           Commission, the Chairperson may appoint additional  
 3           personnel as the Chairperson considers appropriate.

4           (3) *APPLICABILITY OF CERTAIN CIVIL SERVICE*  
 5           *LAWS.*—The director and staff of the Commission  
 6           shall be appointed subject to the provisions of title 5,  
 7           United States Code, governing appointments in the  
 8           competitive service, and shall be paid in accordance  
 9           with the provisions of chapter 51 and subchapter III  
 10          of chapter 53 of that title relating to classification  
 11          and General Schedule pay rates.

12          (4) *EXPERTS AND CONSULTANTS.*—Subject to  
 13          rules prescribed by the Commission, the Chairperson  
 14          may procure temporary and intermittent services  
 15          under section 3109(b) of title 5, United States Code.

16          (5) *STAFF TO FEDERAL AGENCIES.*—Upon re-  
 17          quest of the Chairperson, the head of any Federal de-  
 18          partment or agency may detail, on a reimbursable  
 19          basis, any of the personnel of that department or  
 20          agency to the Commission to assist it in carrying out  
 21          its duties under this section.

22          (g) *POWERS OF COMMISSION.*—

23          (1) *HEARINGS AND SESSIONS.*—The Commission  
 24          may, for the purpose of carrying out this Act, hold  
 25          hearings, sit and act at times and places, take testi-

1        *mony, and receive evidence as the Commission con-*  
2        *siders appropriate. The Commission may administer*  
3        *oaths or affirmations to witnesses appearing before it.*

4            (2) *POWERS OF MEMBERS AND AGENTS.—Any*  
5        *member or agent of the Commission may, if author-*  
6        *ized by the Commission, take any action which the*  
7        *Commission is authorized to take by this section.*

8            (3) *OBTAINING OFFICIAL DATA.—The Commis-*  
9        *sion may secure directly from any department or*  
10       *agency of the United States information necessary to*  
11       *enable it to carry out this Act. Upon request of the*  
12       *Chairperson of the Commission, the head of that de-*  
13       *partment or agency shall furnish that information to*  
14       *the Commission.*

15           (4) *MAILS.—The Commission may use the*  
16       *United States mails in the same manner and under*  
17       *the same conditions as other departments and agen-*  
18       *cies of the United States.*

19           (5) *ADMINISTRATIVE SUPPORT SERVICES.—Upon*  
20       *the request of the Commission, the Administrator of*  
21       *General Services shall provide to the Commission, on*  
22       *a reimbursable basis, the administrative support serv-*  
23       *ices necessary for the Commission to carry out its re-*  
24       *sponsibilities under this Act.*

25        (h) *REPORTS.—*



1           (1) *INTERIM REPORT*.—Not later than July 1,  
2           2012, the Commission shall submit to Congress an in-  
3           terim report of the evaluation and recommendations  
4           made under subsection (b).

5           (2) *FINAL REPORT*.—Not later than December  
6           31, 2012, the Commission shall submit to Congress a  
7           final report on the activities of the Commission, in-  
8           cluding—

9                   (A) specific recommendations and solutions  
10                  proposed by the Commission under subsection  
11                  (b), including a recommendation as to whether  
12                  the Court of Appeals for Veterans Claims should  
13                  have the authority to hear class action or  
14                  associational standing cases;

15                  (B) relevant background and statistical in-  
16                  formation associated with such recommendations  
17                  and solutions; and

18                  (C) other information the Commission de-  
19                  termines appropriate.

20           (i) *TERMINATION*.—The Commission shall terminate  
21           on the date that is two years after the date on which the  
22           Commission submits the final report pursuant to section  
23           (h)(2).

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